

FILE COPY ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 02M-109  
01771

In the Matter of Application of	)	
	)	
EchoStar Communications Corporation,	)	<b>CS Docket No. 01-348</b>
(a Nevada Corporation), General Motors	)	
Corporation, and Hughes Electronics	)	
Corporation (Delaware Corporations)	)	
	)	
(Transferors)	)	
	)	
and	)	
	)	
EchoStar Communications Corporation	)	
(a Delaware Corporation)	)	
	)	
(Transferee)	)	

### PREHEARING ORDER

**Issued:** December 6, 2002

**Released:** December 9, 2002

The first Prehearing Conference<sup>1</sup> is set for **December 19, 2002, at 9:00 a.m.** in OALJ Hearing Room A (TW A-363).<sup>2</sup>

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<sup>1</sup> The Commission is considering an Amendment to the transfer of control application and related satellite application filed by the Applicant panies on November 27, 2002. See Public Notice DA 02-3358 (December 4, 2002) (comments invited in restricted proceeding). **Also**, a civil action has been filed by the United States Justice Department and multiple state Attorneys General in the United States District Court for the District of Columbia (Case No. 1:02CV0138 ESH) (the "District Court case") seeking a permanent injunction against the merger, a case having subject matter related to the licensing and public policy issues that are set in the Commission's Hearing Designation Order (FCC 02-284). Neither event presents cause to delay scheduling of this hearing.

<sup>2</sup> The Hearing Room (TW A-363) and Witness Room (TW A-461) will be opened at 8:30 a.m.

Counsel shall be prepared to discuss:<sup>3</sup>

- Use of discovery in the District Court case as substitute for discovery in this case (particularly the depositions **of** principals and depositions of experts who are expected to be testifying in the District Court proceeding and in the Commission hearing). Counsel for the Applicant parties in this proceeding should promptly coordinate with the Applicants' trial teams in the District Court case.
- Stipulations on Geographic and Product Markets and applicable HHI.
- Procedure and schedule for submitting documents for in camera review for which claims of attorney-client and/or attorney work product are being **asserted**.<sup>4</sup>
- Identity of presently known testifying Experts who will be available for deposition. Discovery/depositions of experts is to be governed by procedures set under FRCP 26 (a)(2) (disclosure of expert testimony) and FRCP 26 (b)(4)(5) (trial preparation, experts, privilege and protection).<sup>5</sup>
- Agreement to terms and conditions of protective order **or** adoption of protective order applied in the District Court case.<sup>6</sup>

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<sup>3</sup> The Intervening Parties shall select a lead counsel to serve as spokesperson at the Conference for Interveners who filed Notices of Appearances.

<sup>4</sup> Relevant documents which have been or will be reviewed by the District Court and are found to be not privileged shall be produced for discovery in this proceeding without further review by the Presiding Judge. If a document has been found to be privileged by the District Court it will not be reviewed de novo here, except where there is an exceptionally strong showing of cause sufficient to overcome a presumption of regularity and correctness of **the** District Court's determination.

<sup>5</sup> FRCP and FRE will **be** applied with respect to expert witnesses, where applicable and appropriate, in order to facilitate trial preparation (e.g. data collection and grounds for experts' opinions) while respecting privileges. Counsel and the parties **are** urged **to** be conservative in asserting privilege. Shortened methods of proof are encouraged. Counsel may agree to categories of proof which can utilize proxy or surrogate evidence **to** the extent such proxy proof **is** shown to be reliable.

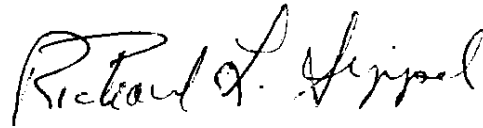
<sup>6</sup> Any protective order submitted would need to have case caption for this case and signature line for **the** undersigned Presiding Judge.

IT IS ORDERED that counsel for the Applicant parties shall consult with counsel for the Intervening parties who filed Notices of Appearances, and counsel for the Enforcement Bureau, and these counsel shall jointly submit to the Presiding Judge **by 12 noon on December 17, 2002**, a proposed schedule for completion of discovery, exchange of exhibit list and witness list,<sup>7</sup> submission of trial briefs, exchange of cases in chief, notification of witnesses for cross-examination, submission of hearing subpoenas for signature (if needed), final prehearing conference date, hearing dates, and post-hearing dates for submission of proposed findings and conclusions and reply findings and conclusions.

IT IS FURTHER ORDERED that if the Applicant and Intervening parties and Bureau counsel cannot agree to scheduling, each shall submit by **12 noon on December 17, 2002**, a Statement on Discovery and Procedural dates that shall not exceed twenty pages and explain why agreement could not be reached.

IT IS FURTHER ORDERED that Intervening parties are to pool their Statement that is to be signed by each Intervener's counsel.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is fluid and cursive, with the first name "Richard" and last name "Sippel" clearly distinguishable.

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>7</sup> Parties and counsel may agree to use written direct testimony of witnesses to be cross-examined at hearing, and/or the use of deposition testimony as evidence. Note that Commission rules provide that party depositions may be used by an adverse party "for any purpose." 47 C.F.R. §1.321(d)(2).